

# A Comparative Analysis of Secretariats Created Under Select Treaty Regimes

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## I. Introduction

The administrative structure of most international organisations includes a secretariat that plays an important role in the functioning of the entire regime. Secretariats act as the backbone of the organisations and mainly perform administrative functions. Secretariats originated with the League of Nations<sup>1</sup> and continued with the United Nations (UN) Secretariat, which has provided administrative support since 1945.<sup>2</sup> Various secretariats may perform common or specific functions depending on the aims of the treaty.<sup>3</sup>

What is a secretariat? There are many definitions. An opinion of the UN Office of Legal Affairs of November 4, 1993 states, with respect to the Climate Change Convention, that a secretariat is a supportive structure.<sup>4</sup> According to James R. Fox, it is a bureaucracy.<sup>5</sup> Loveday compares them with national ministries; of course, international organisations or Multilateral Environmental Agreements (MEAs) have less power than national governments.<sup>6</sup> According to Sandford, secretariats are executive support systems of treaties<sup>7</sup> or international organisations created by the treaty parties to aid the management and implementation of the treaty.<sup>8</sup> Per-Olof Busch states with regard to the Climate Change Secretariat that a secretariat is an “intergovernmental bureaucracy that

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1. Thomas G. Weiss, *International Bureaucracy: The Myth and Reality of the International Civil Service*, 58 INT'L AFF. 287, 289 (1982).

2. UN Charter, Ch. XV, art. 97.

3. PHILIPPE SANDS & PIERRE KLEIN, *BOWETT'S LAW OF INTERNATIONAL INSTITUTIONS* 297-98 (5th ed. 2001).

4. Robin R. Churchill & Geir Ulfstein, *Autonomous Institutional Arrangements in Multilateral Environmental Agreements: A Little-Noticed Phenomenon in International Law*, 94 AM. J. OF INT'L LAW 623, 647 (2000).

5. JAMES R. FOX, *DICTIONARY OF INTERNATIONAL AND COMPARATIVE LAW* 285, 358 (1997).

6. PARRY AND GRANT *ENCYCLOPAEDIC DICTIONARY OF INTERNATIONAL LAW* 455 (John P. Grant and J. Craig Barker eds., 2004).

7. Rosemary Sandford, *International Environmental Treaty Secretariats: A Case of Neglected Potential*, 16 ENVTL. IMPACT ASSESSMENT REVIEW 3, 3 (1996).

8. ROSEMARY SANDFORD, *International Environmental Treaty Secretariats: Stage-Hands or Actors?*, in *GREEN GLOBE YEARBOOK OF INTERNATIONAL CO-OPERATION ON ENVIRONMENT AND DEVELOPMENT*. 17 (1994).

states created to assist them in their cooperative struggle to confront climate change.”<sup>9</sup> For Andresen and Skjaereth, “A secretariat is an international organization established by the relevant parties to assist them in fulfilling the goal(s) of the treaty.”<sup>10</sup> “Such environmental treaty secretariats generally take shape as small intergovernmental bureaucracies that are run by international civil servants under the formal control of predefined multilateral governmental mechanisms.”<sup>11</sup>

The role of secretariats has long been overlooked because secretariats are not perceived as a significant feature of the institutional setup of treaties. The main actors are the nation states—and the secretariats are merely at their service. Recently, however, there has been some research on secretariats in the field of international relations. Secretariats are capable of influencing treaty negotiation and implementation. In fact, treaty secretariats are set up precisely for this purpose – to administer negotiations and to help parties in implementing MEAs.<sup>12</sup> When a treaty is created, it involves many actors such as subsidiary bodies, nation states, and other stakeholders such as communities and non-governmental organisations (NGOs). Secretariats provide the link between these actors and aid their efforts to address the policy challenge in question. Therefore, they have an important role to play.

Sandford has divided environmental history into three parts.<sup>13</sup> First, there are conventions such as the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES),<sup>14</sup> signed in the 1970s in the aftermath of the United Nations Conference on the Human Environment held in Stockholm in 1972. Second, there are conventions such as the Vienna Convention for the Protection of the Ozone Layer (Vienna Convention)<sup>15</sup> and its Montreal Protocol on Substances that Deplete the Ozone Layer (Montreal Protocol)<sup>16</sup> signed in the 1980s that came into being due to the United Nations Environment Programme (UNEP). Finally, there are conventions such as the Convention on Biological Diversity (CBD),<sup>17</sup> the United Nations Framework Convention on Climate Change (UNFCCC),<sup>18</sup> and the United Nations Convention to Combat Desertification in Those Countries Experiencing Serious Drought and/or Desertification, Particularly in Africa (UNCCD),<sup>19</sup> signed in 1992 in the aftermath of the United Nations Conference on Environment and Development held in Rio de Janeiro. This article exam-

9. Per-Olof Busch, *The Secretariat of the Climate Convention: Make a Living in a Straitjacket* 1 (Global Governance Working Paper No. 22, 2006), available at <http://www.glogov.org/images/doc/wp22.pdf>.

10. International Conference on Synergies and Co-ordination between Multilateral Environmental Agreements, Tokyo, Japan, July, 14-16 (1999).

11. STEFFEN BAUER, *The United Nations and the Fight against Desertification: What Role for the UNCCD Secretariat?*, in GOVERNING GLOBAL DESERTIFICATION. LINKING ENVIRONMENTAL DEGRADATION, POVERTY, AND PARTICIPATION 73 (2006).

12. Steffen Bauer, *Does Bureaucracy Really Matter? The Authority of Intergovernmental Treaty Secretariats* 21 (Paper presented at the 45th Annual Convention of the International Studies Association, Montreal, Can., Mar. 17-20, 2004), available at <http://www.ppl.nl/ebooks/files/C08-0052-Bauer-Bureaucracy.pdf>.

13. SANDFORD, *supra* note 8, at 18.

14. CITES, Mar. 3, 1973, 993 U.N.T.S. 244.

15. Vienna Convention, Mar. 22, 1985, 1513 U.N.T.S. 324.

16. MONTREAL PROTOCOL, Sept. 16, 1987, 1522 U.N.T.S. 29.

17. CBD, June 5, 1992, 1760 U.N.T.S. 143.

18. UNFCCC, May 9, 1992, 1771 U.N.T.S. 165.

19. UNCCD, June 17, 1994, 1954 U.N.T.S. 108.

ines the secretariats of these five MEAs which were chosen because of their near-universal membership.

## II. Features of Environmental Secretariats

- Secretariats are central organs in an international organisation and are the functional arm of the Conference of the Parties (COP) (or Meeting of the Parties (MOP) in the case of Protocols) and of the MEA. Their single most important characteristic is their international character because the secretariat staff does not owe allegiance to national governments; it does not receive instructions from any particular government but instead owes allegiance to the treaty, which leads to impartiality.<sup>20</sup> Despite this independence, a secretariat's freedom to act is largely dependent on the will of the parties, frequently nation states.<sup>21</sup> Secretariats actually have two masters – the treaty and the parties. There may, at times, be a conflict between the duty to obey the parties and the duty to uphold the objectives of the treaty. Because the parties may not always follow the treaty, the secretariats' task is even more difficult. For instance, the UNFCCC Secretariat has been accused of bias by certain Parties because it supported the Kyoto Protocol, which is a legal instrument of the Climate Change regime.<sup>22</sup>
- Secretariats function under a veil of legitimacy. This means that they do their work and make proposals under the responsibility of the presiding officers/chairpersons who have been elected by the parties. Because secretariats possess expert knowledge of the regimes they serve and chairpersons have political authority to make use of that knowledge, the actors have a complementary relationship: the secretariats being subservient to the chairpersons.<sup>23</sup> Thus, secretariats' activities are carried out under a veil of legitimacy and approved by the presiding officers. Though the presiding officers have the final say on the proposals to put forward, this veil is indispensable for the functioning of secretariats, as they cannot openly assume the role of a leader.<sup>24</sup>
- They are modelled on the secretariats of the UN system. Their administrative processes such as recruitment of personnel are also close to those of the UN.<sup>25</sup> For example, they try to maintain geographical balance while recruiting personnel.
- They are smaller than other secretariats; for example, the World Trade Organization (WTO) and United Nations Conference on Trade and Development (UNCTAD) Secretariats have about 640 and 400 employees respectively, whereas the Ozone and CBD Secretariats have about 17 and 117 employees respectively.<sup>26</sup>

20. Grant & Barker, *supra* note 6, at 455.

21. Steffen Bauer, Per-Olof Busch & Bernd Siebenhüner, *Administering International Governance: What Role for Treaty Secretariats?* 2 (Global Governance Working Paper No 29, 2007), available at <http://www.glo.gov.org/images/doc/WP29.pdf>.

22. JOANNA DEPLEDGE, *THE ORGANIZATION OF GLOBAL NEGOTIATIONS: CONSTRUCTING THE CLIMATE CHANGE REGIME* 65-66 (2005).

23. Joanna Depledge, *A Special Relationship: Chairpersons and the Secretariat in the Climate Change Negotiations*, 7 GLOBAL ENVTL. POL. 45, 57 (2007).

24. DEPLEDGE, *supra* note 22, at 66-67.

25. SANDFORD, *supra* note 8, at 17, 19.

26. WTO, *Annual Report 2011*, [http://www.wto.org/english/res\\_e/booksp\\_e/anrep\\_e/anrep11\\_chap7\\_e.pdf](http://www.wto.org/english/res_e/booksp_e/anrep_e/anrep11_chap7_e.pdf); UNCTAD, *The UNCTAD Secretariat*, <http://www.unctad.org/Templates/Page.asp?intItemID=1931&>

- They may be activist or passive, the former being in a position to affect treaty outcomes.<sup>27</sup> In reality, no secretariat is passive; they only prefer to remain in the background instead of in the limelight. Thus even passive secretariats can be very active behind the scenes.<sup>28</sup>
- Secretariats are stable elements in a changing international system, providing an element of permanence. This is a very important feature because national governments come and go, but MEAs have long-term goals and so continuity in secretariats is important. They are the only active actors between sessions of the COP and subsidiary bodies. The continuity of their staff builds institutional expertise and memory. In fact, this is the reason why parties establish secretariats.<sup>29</sup>
- Secretariats may be created by the MEA such as in the case of CITES (article XII(1)) or by the COP. In the latter case, the MEA may establish an interim secretariat and the COP may be required to establish the permanent secretariat. Examples are the Vienna Convention (article 7(2)), the CBD (article 24(2)), the UNCCD (article 23(3)), and the UNFCCC (article 8(3)). Permanent secretariats are more active than interim ones because the institutional status of the former is assured.<sup>30</sup>
- MEAs may also make use of secretariats of existing organisations; for example, the CBD and Ozone Secretariats are hosted by the UNEP.<sup>31</sup> Since having their own secretariat requires more resources, the use of established secretariats may reduce these expenses. Also, UNEP provides an established administrative structure. Though the Ozone Secretariat is housed within the UNEP headquarters, it is not a necessary condition that secretariats be located physically within the premises of the host organisation. In the case of the UNFCCC, the interim Secretariat from which the permanent Secretariat was derived was provided by the UN Secretariat following UN rules and using UN resources. Given these advantages, the COP, while considering the permanent Secretariat, agreed on a formal institutional linkage with the UN. This linkage extends to administrative regulations on personnel and financial matters such as staff entitlements and financing of Convention conferences by the UN. Also, the Secretariat is encouraged to cooperate with other relevant agencies at the national and international level.<sup>32</sup> Since the UNFCCC and UNCCD Secretariats serve autonomous UN Conventions, their Executive Secretaries are ex officio Assistant Secretary-Generals to the UN, whereas the Executive Secretaries of the CBD and Ozone Secretariats report to the UN through the Executive Director of the UNEP. According to Churchill and Ulfstein, it is possible that there may be a conflict between the host organisation such as UNEP and the COP of a MEA such as the Vienna Convention in regard to the work of the MEA's secretariat. But this is largely theoretical, as the host organisation cannot interfere in the functioning of the MEA.

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lang=1; UNEP Ozone Secretariat, *About the Secretariat*, [http://ozone.unep.org/new\\_site/en/about\\_the\\_secretariat.php](http://ozone.unep.org/new_site/en/about_the_secretariat.php); CBD, *The CBD Secretariat, Staff List*, <http://www.cbd.int/secretariat/staff>.

27. ROSEMARY SANDFORD, *Secretariats and International Environmental Negotiations: Two New Models*, in INTERNATIONAL ENVIRONMENTAL TREATY MAKING 27 (1992).

28. Depledge, *supra* note 23, at 54.

29. SANDFORD, *supra* note 8, at 17, 19.

30. *Id.* at 19.

31. Vienna Convention, Mar. 22, 1985, 1513 U.N.T.S. 324, art. 7(2).

32. *Administrative and Financial Matters Institutional Linkage of the Convention Secretariat to the United Nations*, ¶¶ 5, 7-8, 10, UN Doc. FCCC/SBI/1999/7 (Apr. 16, 1999).

The UNEP emphasises its importance in relation to the Ozone Secretariat, but the latter is a distinct intergovernmental secretariat,<sup>33</sup> and the UNEP can only intervene in its administrative matters. In fact, the COP confers certain powers on the UNEP because it hosts the MEA secretariats, but the UNEP follows the UN rules in administering the secretariats.<sup>34</sup> In the case of the UNFCCC, this distinction is quite clear (i.e., the Secretariat reports to the COP for MEA work and to the UN for staff matters).<sup>35</sup> Moreover, in the case of the CITES Secretariat administered by UNEP, its conflicts with the UNEP relate to staff and budget matters.<sup>36</sup>

### III. Legal Personality of Environmental Secretariats

Before examining the legal status of secretariats, it is worthwhile to define the components of legal status. The legal status of an entity may be characterised by the following attributes: (1) it should have rights and privileges of a binding nature; (2) no party should be able to alter the position of the entity in any manner or take any decision contrary to the rights or interests of the entity without its consent; and (3) it should have the capacity to enter into agreements or contracts with other parties.

The question of international legal personality of secretariats will benefit from a discussion of two Advisory Opinions of the International Court of Justice (ICJ). In the Advisory Opinion of April 11, 1949, on *Reparation for Injuries Suffered in the Service of the United Nations*,<sup>37</sup> the ICJ stated that in case an agent of the UN suffered injury while performing his duties, the UN as an organisation had the capacity to bring an international claim against the government of the state responsible for the injury in order to obtain reparation for damages caused to the UN and to the victim. This would apply in the case of a member and non-member state that has breached its obligations towards the UN because the members of the UN created an entity whose international legal personality is objective and therefore recognised by non-members as well.<sup>38</sup> According to the ICJ, the capacity to bring a claim vests with states and if organisations can bring claims, it would mean they have international personality. The ICJ did not say that a forum where a claim can be brought is required to confer international legal personality on the organisation. The Court further stated that because the UN Charter conferred rights and obligations on the UN, the latter had legal personality.

Additionally, according to the ICJ in its Advisory Opinion of December 20, 1980 on the question of the Interpretation of the Agreement of 25 March 1951 between the World

33. Bauer, *supra* note 12, at 17.

34. UNEP, *The Relationship between the Executive Director of UNEP and the Conventions Regarding the Administration of Their Secretariats*, Fourth Meeting on Coordination of Secretariats of Environmental Conventions, UN Doc. UNEP/DEP/Coord.4/3/COR.1 1-7 at 2, 3 (Jan. 4, 1996), in BHARAT H. DESAI, *INSTITUTIONALIZING INTERNATIONAL ENVIRONMENTAL LAW* 210 (2004).

35. See Churchill & Ulfstein, *supra* note 4, at 628, 635.

36. See Rosemary Sandford, *Secretariats as Catalysts: A Comparative Study of the Influence of Global Environmental Treaty Secretariats on Treaty Implementation* (June 1998) (unpublished Ph.D. dissertation, Massachusetts Institute of Technology) at 234-35, <http://hdl.handle.net/1721.1/28197>.

37. See *Reparation for Injuries Suffered in the Service of the United Nations*, Advisory Opinion: I.C.J. Reports 1949, p. 174.

38. See *id.* at 185, 187.

Health Organization (WHO) and Egypt,<sup>39</sup> a contractual legal regime was created between Egypt and the WHO when they entered into an agreement on March 25, 1951. This agreement had a legally binding character and the WHO was able to ask for an Advisory Opinion concerning this agreement. Could the fact that the WHO was able to enter into an agreement with legally binding character mean that the WHO has international legal personality? Even if the secretariat of a MEA has rights that can be enforced against parties there may be no forum where these can be enforced. That does not mean, however, that the secretariat does not possess legal personality. Applying the Reparations Advisory Opinion, one could say an environmental secretariat can bring a claim against a state, but in which forum? MEAs do not contain dispute redressal forums<sup>40</sup> such as in the WTO. Even if they did, it is not known if a secretariat could bring a claim against the parties in such a forum given that these forums are generally established to resolve disputes between parties to the organisation, as is the case of the WTO. In case the secretariat wanted to bring a claim against a non-party in a case similar to the Reparations Opinion, where would it do so? Even if one does not apply the two Advisory Opinions in the case of secretariats because they relate to organisations and not secretariats, the fact remains that a secretariat has rights. The question is whether these rights are sufficient to confer international legal personality on the secretariat. Applying the Reparations Opinion, the fact that the MEA confers rights and obligations on the secretariat may indicate that it has international legal personality.

Another aspect of the legal personality issue is that environmental secretariats are frequently linked to the UN. Would they, as a consequence, have legal personality because the UN has it? For example, the Climate Change Convention Secretariat is institutionally linked to the UN while not being fully integrated in the work programme and management structure of any particular department or programme.<sup>41</sup> The meaning of "institutionally" is not relevant because the legal regime enjoyed by the UN cannot be automatically extended to the UNFCCC Secretariat.<sup>42</sup> For the Secretariat to have legal personality, the COP would have to confer it by means of a decision.<sup>43</sup> But the COP still has to consider whether the Secretariat should be given international legal personality.<sup>44</sup> On the other hand, the host organisation, the UN in this case, may commit a breach of its obligations if it does not provide resources to the Secretariat for its functions.<sup>45</sup> This would mean that the Secretariat has international legal personality. Regarding other MEAs, the UNEP administers the CITES Secretariat and hosts the Ozone and CBD Secretariats (CITES, the Vienna Convention, and the Montreal Protocol were "negoti-

39. See Interpretation of the Agreement of 25 March 1951 between the WHO and Egypt, Advisory Opinion, I.C.J. Reports 1980, p. 73.

40. The UNFCCC, the Vienna Convention, and the CBD all state that disputes can be referred to the ICJ, which means that the Convention itself does not have a dispute redressal forum. See UNFCCC, May 9, 1992, 1771 U.N.T.S. 165, art. 14(2)(a); Vienna Convention, Mar. 22, 1985, 1513 U.N.T.S. 324, art. 11(3)(b); CBD, June 5, 1992, 1760 U.N.T.S. 143, art. 27(3)(b).

41. Institutional Linkage of the Convention Secretariat to the United Nations, Climate Change COP Decision 14/CP.1, UN Doc. FCCC/CP/1995/7/Add.1, at 42, ¶ 2.

42. Institutional and Budgetary Matters: Arrangements for Relocation of the Convention Secretariat to Bonn, UN Doc. FCCC/SBI/1996/7, ¶ 7.

43. See *id.* ¶ 11(5).

44. Agreement Concerning the Headquarters of the Convention Secretariat, Climate Change COP Decision 15/CP.2, UN Doc. FCCC/CP/1996/15/Add.1, at 63, ¶ 2.

45. See Churchill & Ulfstein, *supra* note 4, at 635.

ated under the auspices of UNEP").<sup>46</sup> The same question regarding legal personality would arise in the case of these secretariats as well.

It is also possible to look at the Headquarters agreement to locate the secretariat in a particular country. For example, the Headquarters agreement between the UNFCCC Secretariat, the UN, and the Republic of Germany to locate the Secretariat in Germany states that the Secretariat shall have legal capacity in Germany.<sup>47</sup> The COP has approved this agreement.<sup>48</sup> The Secretariat's authority to enter into such an agreement derives from the request of the Subsidiary Body for Implementation<sup>49</sup> and is not conclusive of the Secretariat's international legal personality. Article 6(3) of the Headquarters agreement requires twelve months' notice in order for the agreement to be terminated.<sup>50</sup> Does this mean that if this provision is not honoured, the injured party is entitled to bring a claim? If the answer is in the affirmative, the Secretariat would have international legal personality. But again the question arises, in which forum would the claim be settled? Moreover, article 6(4) of the Headquarters agreement states that disputes are to be settled in accordance with article 26(2) of the United Nations Volunteers Programme Headquarters Agreement which provides that disputes are to be resolved on the basis of international law.<sup>51</sup> Article 6(6) of the Headquarters agreement stipulates that the agreement enters into force after notification from Parties.<sup>52</sup> Would this suffice to provide international legal personality to the Secretariat which is party to the Headquarters agreement? However, the UN Office of Legal Affairs has stated that the Secretariat is not *de jure* a UN subsidiary organ.<sup>53</sup> In the case of the CBD, the Headquarters agreement is between Canada and the UNEP; the Secretariat is not a party.<sup>54</sup> If the Secretariat is not even involved, the question of its international legal personality likely does not arise.

Article 24(1)(d) of the CBD, article 8(2)(f) of the UNFCCC, article 23(2)(e) of the UNCCD, and article 7(1)(e) of the Vienna Convention state that Secretariats shall ensure necessary coordination with other international bodies and enter into such administrative and contractual arrangements as may be required for the effective discharge of their functions.<sup>55</sup> These articles are not limited to domestic arrangements.<sup>56</sup> Can this be construed as authorising these Secretariats to enter into binding international agreements? Accord-

46. *Id.* at 630.

47. *Administrative and Financial Matters Establishment of the Permanent Secretariat and Arrangements for its Functioning*, UN Doc. FCCC/CP/1996/MISC.1, art. 4(1).

48. Agreement Concerning the Headquarters of the Convention Secretariat, Climate Change COP Decision 15/CP.2, UN Doc. FCCC/CP/1996/15/Add.1, at 63, ¶ 1.

49. Report of the Subsidiary Body for Implementation on the Work of its Second Session, held at Geneva from 27 February to 8 March 1996, UN Doc. FCCC/SBI/1996/9, ¶ 66(c).

50. *Administrative and Financial Matters Establishment of the Permanent Secretariat and Arrangements for its Functioning*, UN Doc. FCCC/CP/1996/MISC.1, art. 6(3).

51. *Id.* at art. 6(4).

52. *Id.* at art. 6(6).

53. *Institutional and Budgetary Matters: Arrangements for Relocation of the Convention Secretariat to Bonn*, UN Doc. FCCC/SBI/1996/7 *supra* note, at ¶ 11(2).

54. *Location of the Secretariat*, CBD COP Decision II/19, ¶ 5, available at <http://www.cbd.int/decision/cop/?id=7092>.

55. See CBD, June 5, 1992, 1760 U.N.T.S. 143, art. 24(1)(d); UNFCCC, May 9, 1992, 1771 U.N.T.S. 165, art. 8(2)(f); UNCCD, June 17, 1994, 1954 U.N.T.S. 108, art. 23(2)(e); Vienna Convention, Mar. 22, 1985, 1513 U.N.T.S. 324, art. 7(1)(e).

56. Churchill & Ulfstein, *supra* note 4, at 649.

ing to the Handbook of the Convention on Biological Diversity Including its Cartagena Protocol on Biosafety, a liaison group of the Secretariats of the three Rio conventions (CBD, UNFCCC and UNCCD) has been established to promote complementarities amongst the Secretariats without compromising their independent legal status.<sup>57</sup> Does this legal status refer only to the authority required to form such a group? In other words, is this an example of the aforementioned secretarial function? Or can it be interpreted to mean a status beyond that? Given that one secretariat can enter into an agreement with another one, it may seem plausible to conclude that secretariats have legal personality on the international plane. But in the case of the UNFCCC Secretariat, the COP still has to consider the question of legal personality.

The CITES Secretariat has entered into memoranda of understanding with various secretariats, government departments, universities, and others.<sup>58</sup> The CBD Secretariat has also entered into memoranda of cooperation with various other secretariats.<sup>59</sup> One such memorandum with the Secretariat of the Convention on Wetlands of International Importance Especially as Waterfowl Habitat (Ramsar Secretariat) is termed an "agreement" and requires a year's notice for termination.<sup>60</sup> The legal personality of the Secretariats would depend on whether they can bring a claim in case the provision is not complied with. In other words did the parties create a binding agreement? The use of exhortatory language in the memoranda indicates that they are not intended to be binding.<sup>61</sup> This can be distinguished from the case of the WHO Advisory Opinion wherein the agreement between Egypt and WHO had a legally binding character.

#### IV. Functions of Environmental Secretariats

- All the secretariats examined here perform certain common functions. These are generally of an administrative nature because the work of the secretariat is to provide services to the treaty regime. Such functions may be (1) arranging and servicing the sessions of COP, MOP, and subsidiary bodies; (2) preparing and transmitting reports based on information received; (3) assisting developing country parties in compiling and transmitting requisite information; (4) preparing activity reports for the COP; (5) coordination with secretariats of other international bodies; (6) entering into arrangements with external entities for its proper functioning; and (7) performing residual functions as required by the Convention/Protocol or COP/MOP. Since the advent of the internet, secretariats also maintain the websites of MEAs.

Basically, secretariats are responsible for efficient conduct of the work of the treaty, their main task being to ensure the smooth functioning of meetings and conferences organised under the aegis of the MEA.<sup>62</sup> They may also prepare the provisional agenda,

57. SECRETARIAT OF THE CONVENTION ON BIOLOGICAL DIVERSITY, HANDBOOK OF THE CONVENTION ON BIOLOGICAL DIVERSITY INCLUDING ITS CARTAGENA PROTOCOL ON BIOSAFETY, at xxxiii (3rd ed. 2005).

58. See CITES, *Cooperation and Partnerships*, <http://www.cites.org/eng/disc/coop.php> (last visited Nov. 18, 2011).

59. See Churchill & Ulfstein, *supra* note 4, at 654.

60. *Id.*

61. *Id.*

62. See Volker Röben, *Institutional Developments under Modern International Environmental Agreements*, 4 MAX PLANCK YEARBOOK OF UNITED NATIONS LAW 363, 423-24 (2000), available at [http://www.mpil.de/shared/data/pdf/pdfmpunyb/roeben\\_4.pdf](http://www.mpil.de/shared/data/pdf/pdfmpunyb/roeben_4.pdf).



undertake studies, give advice on legal, technical, and procedural matters, inform the parties of the meetings, and facilitate the process as a whole.<sup>63</sup> Rule 9 of the UNFCCC Rules of Procedure states that the Secretariat shall draft the provisional agenda of the COP sessions in agreement with the President.<sup>64</sup> The Climate Change and CBD Secretariats also organise technical workshops to advance discussions in subsidiary bodies and then summarise the results.<sup>65</sup> Secretariats also present introductory notes on submissions of working groups or parties.<sup>66</sup> Given that secretariats prepare the provisional agenda and do the preparatory work, they are “able to pre-structure the political process at the meetings”<sup>67</sup> and thus exercise some influence in the political decision-making process. However, secretariats do not generally submit proposals in the form of recommendations to the parties unless mandated by the latter to do so.<sup>68</sup>

Even though it is not very frequent, secretariats may provide an opinion on the interpretation and application of the MEA. For instance, the CITES Secretariat clearly termed a COP decision as incompatible with the treaty because it did not follow the specified procedure for the transfer of a species from one Appendix to another.<sup>69</sup>

The nature of functions performed by secretariats also depends on the aims of the MEA. Some secretariats perform certain specific tasks related to the aforementioned functions. The Ozone Secretariat notifies Parties of requests for technical assistance and informs non-Party observers as well, leading to more transparency.<sup>70</sup> It also encourages non-Parties to attend sessions of MOP as observers.<sup>71</sup> The UNCCD Secretariat assists developing members, particularly in Africa, in compiling and communicating requisite information to the COP, thus helping them to meet the requirements of the Convention.<sup>72</sup> The CBD Secretariat organises all meetings under the Convention, prepares documents, facilitates the flow of information, represents the Convention externally, and promotes public awareness activities in pursuance of article 13 of the Convention.<sup>73</sup> It also assists the Parties to the Cartagena Protocol on Biosafety (Cartagena Protocol),<sup>74</sup> and if the costs of the Secretariat services for this Protocol are distinct, the costs are met by the Parties to the Protocol (article 31(3) of the Cartagena Protocol).<sup>75</sup> This is a unique provision and is not provided for in the Kyoto and Montreal Protocols. The CITES Secretariat publishes and distributes to the parties current editions of Appendices containing lists of species.<sup>76</sup> The secretariats also play a role in the compliance/implementation procedure of the treaties.

63. *See id.* at 424, n.197.

64. *See id.* at 424.

65. *See id.*

66. *See id.*

67. *See id.*

68. *See id.* at 424-25.

69. *See id.* at 431, n. 212.

70. *See* MONTREAL PROTOCOL, Sept. 16, 1987, 1522 U.N.T.S. 29, art. 12(d), (f).

71. *See id.* at art. 12(e)-(f).

72. *See* UNCCD, June 17, 1994, 1954 U.N.T.S. 108, art. 23(2)(c).

73. *See* CBD, THE CBD SECRETARIAT, ROLE, <http://www.cbd.int/secretariat/role.shtml> (last visited July 10, 2011).

74. CARTAGENA PROTOCOL ON BIOSAFETY TO THE CONVENTION ON BIOLOGICAL DIVERSITY, JAN. 29, 2000, 2226 U.N.T.S. 257.

75. *See id.* at art. 31(3).

76. *See* CITES, Mar. 3, 1973, 993 U.N.T.S. 244, art. XII(2)(f).

## V. Role of Secretariats in Compliance/Implementation of the Treaty

The idea of negotiating a MEA is to attain the objective of protecting certain environmental resources. The parties to the MEA are required to comply with the treaty. The secretariats directly administer the MEA by administering the compliance and implementation mechanisms. Indirectly, secretariats help in compliance, mainly by assisting developing parties if they so request, in compiling and communicating information required under the conventions (article 8(2)(c) of the UNFCCC and article 23(2)(c) of the UNCCD) and by disseminating information relating to technologies.<sup>77</sup> Thus, this secretarial function effectively has two aspects to it: compliance monitoring and implementation.

### A. ROLE OF SECRETARIATS IN MONITORING OF COMPLIANCE

Generally, all the secretariats in the sample receive factual information on compliance from the parties and forward it to the organ that assesses and evaluates this information. Secretariats play a bigger role in MEAs whose implementing mechanism consists of lists of species, substances or areas controlled because parties are required to provide information regarding regulatory action taken in respect of such lists to the secretariat to be updated or maintained by the latter.<sup>78</sup> For example, in the case of the Montreal Protocol and the CITES, secretariats can trigger the non-compliance procedure.<sup>79</sup>

According to article 12(1), (2), (3) of the UNFCCC, Parties are required to communicate to the Secretariat steps taken and policies and measures adopted or envisaged for implementation of the Convention and other relevant information such as the effects of the measures.<sup>80</sup> The Secretariat transmits such information to the COP and subsidiary bodies (article 12(6)).<sup>81</sup> In the case of the Kyoto Protocol, the UNFCCC Secretariat transmits the reports prepared by the Expert Review Teams to all the Parties to the Convention.<sup>82</sup> It also lists for further consideration by the MOP any questions of implementation mentioned in these reports. These reports contain not only an assessment of the implementation of the commitments of Parties but also potential problems and factors influencing compliance (article 8(3)).<sup>83</sup> What is important is that the Secretariat does not by itself initiate the procedure, but only transmits the reports. Thus it facilitates flow of information that supports the compliance regime of the Kyoto Protocol and helps in monitoring implementation of the Convention.

Under article 9(1) of the UNCCD, the Secretariat receives notifications of national action plans for implementation by the Parties.<sup>84</sup> Article 26(1) requires the Parties to provide to the Secretariat reports on measures taken for the implementation of the Convention. The Parties also provide information on the implementation of strategies and

77. See UNFCCC, May 9, 1992, 1771 U.N.T.S. 165, art. 8(2)(c); UNCCD, June 17, 1994, 1954 U.N.T.S. 108, art. 23(2)(c).

78. Røben, *supra* note 62, at 427.

79. See *id.* at 430-31.

80. UNFCCC, May 9, 1992, 1771 U.N.T.S. 165, art. 12(1)-(3).

81. See *id.* at art. 12(6).

82. See Kyoto Protocol to the UNFCCC, Dec. 11, 1997, 2303 U.N.T.S. 214, art. 8(3).

83. *Id.*

84. UNCCD, June 17, 1994, 1954 U.N.T.S. 108, art. 9(1).

programmes and may make a submission on measures taken at subregional/regional levels as part of action programmes (article 26(2), (3), (4)).<sup>85</sup> The Secretariat is required to communicate such information to the COP and subsidiary bodies (article 26(6)).<sup>86</sup> Appended to the Convention are four regional implementation annexes by region of the world viz. Africa, Asia, Latin America and the Caribbean, and Northern Mediterranean.<sup>87</sup> In the case of the first three regions, the Secretariat may facilitate consultative processes or coordination meetings for implementation if so desired by the Parties by way of providing advice on the organisation of effective consultative/coordination arrangements, providing information to bilateral and multilateral agencies concerning consultative/coordination meetings or processes to encourage their active involvement, and providing other relevant information to establish or improve consultative/coordination arrangements/processes.<sup>88</sup> This indicates that the functions of the Secretariat of the UNCCD have a strong developing country focus. But otherwise, the powers of the Secretariat in regard to implementation do not amount to much and can be said to be on par with those of the UNFCCC Secretariat. Despite this, the Secretariat has played an important role in interpreting the meaning of "implementation" and acting accordingly as we will see further on in this article.

According to the CBD Secretariat, it plays an important role in assisting the implementation of the Convention.<sup>89</sup> It compiles national reports on compliance by domestic authorities, synthesises these reports and information on implementation, and then forwards the resulting synthesis to the COP.<sup>90</sup> So the Secretariat compiles the report on compliance, unlike the UNFCCC Secretariat which transmits to the Parties reports prepared by the Expert Review Teams and the UNCCD Secretariat which transmits to the COP information obtained from the Parties.<sup>91</sup>

According to article 5 of the Vienna Convention, the Secretariat receives information from the Parties on measures adopted to implement the objectives of the Convention and Protocols and transmits it to the COP.<sup>92</sup> Here, the Ozone Secretariat acts in a manner similar to the UNCCD Secretariat.

The Montreal Protocol has a separate non-compliance procedure giving enhanced powers to the Secretariat.<sup>93</sup> The Ozone Secretariat coordinates the flow of information between the Parties and the Implementation Committee.<sup>94</sup> Any Party can make a submission regarding its reservations as to the implementation of the Montreal Protocol by another Party and the Secretariat will transmit this submission to the Party concerned who

85. *Id.* at art. 26(2)-(4).

86. *Id.* at art. 26(6).

87. *See id.* at Annexes I-IV.

88. *See id.* at Annex I, art. 18(4); Annex II, art. 8(3); Annex III, art. 7(2).

89. *See* CBD, THE CBD SECRETARIAT, ROLE, <http://www.cbd.int/secretariat/role.shtml> (last visited July 10, 2011).

90. *See id.*

91. *See* Kyoto Protocol to the UNFCCC, Dec. 11, 1997, 2303 U.N.T.S. 214, art. 8(3); UNCCD, June 17, 1994, 1954 U.N.T.S. 108, art. 26(6).

92. *See* Vienna Convention, Mar. 22, 1985, 1513 U.N.T.S. 324, art. 5.

93. *See* Montreal Protocol, *Report of the Fourth Meeting of the Parties to the Montreal Protocol on Substances that Deplete the Ozone Layer*, Nov. 25, 1992, U.N. Doc. UNEP/OzL.Pro.4/15, Annex IV.

94. *See id.* at Annex IV, ¶ 2.

has to file a reply and substantiating information to the Secretariat and the Parties.<sup>95</sup> The Secretariat sends these documents together with the submission to the Implementation Committee.<sup>96</sup> If the Secretariat becomes aware of possible non-compliance by a Party who does or does not provide information on request, the Secretariat shall inform the MOP and the Implementation Committee.<sup>97</sup> The Secretariat transmits to the MOP information received from Parties relating to results of non-compliance proceedings under article 11 of the Vienna Convention.<sup>98</sup> The Secretariat also transmits to the Implementation Committee any explanation provided by any Party as to the reasons for non-compliance.<sup>99</sup> The Implementation Committee can also request information from the Secretariat.<sup>100</sup> With respect to the Montreal Protocol, the Secretariat also receives statistical data from Parties regarding the production, import, and export of controlled substances (article 7 of the Montreal Protocol).<sup>101</sup> The Parties are also required to report to the Secretariat every two years on the research and exchange of information they have engaged in to promote awareness regarding the substances that deplete the Ozone layer (article 9 of the Montreal Protocol).<sup>102</sup> It then prepares and distributes to the Parties reports based on this technical information (article 12(c) of the Montreal Protocol), thus providing the informational basis for legislative decision-making by the latter.<sup>103</sup> Given that the Secretariat receives this information from the Parties, it is in a position to know about possible non-compliance and can initiate the procedure. This is unlike the UNFCCC Secretariat in the case of the Kyoto Protocol and the UNCCD and CBD Secretariats that do not inform the Implementation Committee of non-compliance and so do not initiate the procedure.

Under article VIII(4)(c) of the CITES, if a living specimen is confiscated, the Management Authority may consult the Secretariat to decide the future course of action.<sup>104</sup> This may include returning the specimen to the state or putting it in a rescue centre or other appropriate place.<sup>105</sup> Article VIII(7) requires Parties to transmit to the Secretariat reports on implementation of the Convention containing details of trade in designated species as well as legislative, administrative, and regulatory measures taken to enforce the Convention.<sup>106</sup> The Secretariat can ask the Parties to supply further information required for the implementation of the Convention (article XII(2)(d)) and files reports to the Parties on the implementation of the Convention (article XII(2)(g)).<sup>107</sup> It also undertakes technical studies on issues concerning implementation of the Convention (article XII(2)(c)) and is the only secretariat that makes recommendations regarding implementation (article XII(2)(h)).<sup>108</sup> The CITES Secretariat can be said to act like the Ozone Secretariat, be-

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95. See *id.* at Annex IV, ¶¶ 1, 2.

96. See *id.* ¶ 2.

97. See *id.* at Annex IV, ¶ 3.

98. See *id.* at Annex IV, ¶ 12.

99. See *id.* at Annex IV, ¶ 4.

100. See *id.* at Annex IV, ¶ 7(c).

101. See MONTREAL PROTOCOL, Sept. 16, 1987, 1522 U.N.T.S. 29, art. 7.

102. See *id.* at art. 9.

103. See *id.* at art. 12(c).

104. See CITES, Mar. 3, 1973, 993 U.N.T.S. 244, art. VIII(4)(c).

105. See *id.* at art. VIII(4)(b).

106. See *id.* at art. VIII(7).

107. See *id.* at art. XII(2)(d), (g).

108. See *id.* at art. XII(2)(c), (h).

cause it has the authority to take action on its own and inform the Management Authority of a Party in case a species is adversely affected by trade or the Convention is not being implemented (article XIII(1)).<sup>109</sup> In such a case, the Party concerned has to reply to the Secretariat and propose remedial action (article XIII(2)).<sup>110</sup> So the role of the CITES Secretariat is more advanced than that of the UNFCCC, UNCCD, and CBD Secretariats because it goes beyond merely transmitting information. Like the Ozone Secretariat, the CITES Secretariat can ask the Parties for more information and even go further as it can make recommendations.

The CITES COP has recognised the important role played by the Secretariat in the enforcement process. In 2000, the CITES COP urged the Parties and external actors to provide additional funds to the Secretariat to reinforce the enforcement mechanism.<sup>111</sup> These funds were to be used to appoint additional officers in the Secretariat to work on enforcement-related issues, to assist in the drafting and implementation of regional enforcement agreements, and to provide training and technical assistance to the Parties. The Secretariat had also been allowed to take measures with the International Criminal Police Organization (ICPO-Interpol) and the World Customs Organization to facilitate the exchange of information.<sup>112</sup> The COP also directed the Secretariat to work closely not only with the aforementioned actors but also with the Convention's institutions, national enforcement agencies, and existing intergovernmental bodies such as the UN Office on Drugs and Crime and submit a report on enforcement matters at each meeting of the COP.<sup>113</sup>

Moreover, its many recommendations gave the Secretariat a larger role in the enforcement procedure. These recommendations included asking the Parties to provide further information to the Secretariat within a time limit, authorising the Secretariat to report implementation problems to the Standing Committee in case they remain unsolved even after provision of technical assistance to the Party concerned, and the establishment of enforcement task forces by the Secretariat.<sup>114</sup>

The process of receiving reports and commencement of the non-compliance procedure by the secretariats is very significant because parties are not willing to initiate such procedures against each other. Not many secretariats have been entrusted with the function of triggering the non-compliance procedure with most being relegated to a fact-gathering role.

## B. SECRETARIAL ASSISTANCE IN IMPLEMENTATION

Secretariats assist parties in implementing the MEA, thus complying with international obligations. Because secretariats receive national reports, they are in a position to know implementation difficulties faced by members and, consequently, to know their needs. Secretariats use their contacts and expertise to provide assistance such as legal and policy

109. See *id.* at art. XIII(1).

110. See *id.* at art. XIII(2).

111. See CITES COP, 11th Sess. (Apr. 10-20, 2000), Resolution Conf. 11.3 (Rev. CoP15) Compliance and enforcement, available at <http://www.cites.org/eng/res/11/11-03R15.php>.

112. See *id.*

113. See *id.*

114. See *id.*

advice as well as access to external funds.<sup>115</sup> This kind of assistance is useful for the country and also for the secretariat because it enhances its credibility and influence.

The UNFCCC Secretariat is not mandated to do much in the field of implementation. It does not disburse funds or implement projects. It does not favour adoption of any particular policies nor can it take decisions or impose sanctions on Parties to make them comply. The Secretariat only collects and processes information and coordinates reviews of data communicated by Parties.<sup>116</sup> However, the Secretariat tries to ensure that developed countries are mindful of the concerns of the Association of Small Island States when they take decisions.<sup>117</sup> In fact, this reticent attitude may be the result of the Secretariat's narrow mandate and the fact that Parties guard their sovereignty zealously. Even if the Secretariat makes an objective suggestion in favour of implementation of the treaty, it could be misinterpreted by the Parties.

The UNCCD Secretariat has, by way of institutionalisation of the Convention, helped in its implementation.<sup>118</sup> It does not have the resources to fund projects but indirectly helps capacity development within the jurisdiction of members.<sup>119</sup> It provides documentation on the Convention in UN languages and prepares informational kits for elementary schools.<sup>120</sup> It also helps in establishing National Action Programmes (NAPs) in affected countries.<sup>121</sup> It prepares the national focal points to deal with international partners and helps international donors identify people who need training to implement the Convention locally.<sup>122</sup> The Secretariat staff also assists the national focal points of developing members by advising them on how to fulfil the requirements of the COP.<sup>123</sup> The staff sometimes holds workshops and sensitises the national focal points of the funding opportunities available but such workshops are rather rare due to a shortage of resources.<sup>124</sup>

The CBD Secretariat provides skills-oriented capacity building.<sup>125</sup> It does this by organising courses, compiling and publishing guidelines and administrative practices, and responding to requests on how to build capacity for implementation of the Convention.<sup>126</sup> Practitioners in member states find these activities useful.<sup>127</sup> These efforts are commendable because capacity building is not in the mandate of the Secretariat nor does it have the resources to fund projects.<sup>128</sup> However, the Secretariat has not been very successful in fulfilling the monitoring obligation because states do not want to be controlled by it. For instance, the Secretariat developed a scheme to include quantifiable measures in national reports filed by states to the Secretariat, but the scheme was not adopted by the Parties.<sup>129</sup>

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115. See Sandford, *supra* note 36, at 122.

116. See Busch, *supra* note 9, at 7-8, 10.

117. See Sandford, *supra* note 36, at 123.

118. Bauer, Busch, & Siebenhüner, *supra* note 21, at 18.

119. BAUER, *supra* note 11, at 80-81.

120. *Id.*

121. *Id.*

122. *Id.*

123. *Id.*

124. *Id.*

125. Bernd Siebenhüner, *Administrator of Global Biodiversity: The Secretariat of the Convention on Biological Diversity*, 16 BIODIVERSITY & CONSERVATION 259, 266 (2007).

126. *Id.*

127. *Id.*

128. *Id.* at 265-66.

129. *Id.* at 269.

In fact, the Parties frequently do not even provide the reports to the Secretariat, and it has to ask for them.<sup>130</sup>

The Ozone Secretariat is not mandated to build technical and financial capacity.<sup>131</sup> Instead, it has created a very efficient communication network with the National Ozone Units and advises national bureaucrats on request.<sup>132</sup> It also holds workshops in developing countries to prepare the staff of the National Ozone Units for sessions of MOP who then prepare their delegates.<sup>133</sup> This helps them link their work at the local level with the ozone discourse at the international level.<sup>134</sup> This is useful for developing members as it helps them in fulfilling the implementation objectives of the regime. This provision of advice on implementation-related matters has an impact on the management of compliance issues at the national level.<sup>135</sup> Because the delegates of the National Ozone Units are better informed, they can contribute better to international cooperation. The Secretariat also administers the reporting requirements of members, which is a complex function because the number of members in the Convention, Protocol, and its amendments is not the same.<sup>136</sup>

The CITES Secretariat helps developing members access international scientific and financial resources such as the CITES Trust Fund, which helps them fulfil their reporting and performance obligations.<sup>137</sup> The CITES Trust Fund is a financial mechanism of the Convention itself.<sup>138</sup> It matches external donors with a needy country to develop national legislation and strengthen implementation of the Convention.<sup>139</sup> The Secretariat's close links with NGOs help in capacity building activities such as training and technology transfer.<sup>140</sup> It holds extensive regional training programmes as part of its regional and national capacity building initiatives.<sup>141</sup> The CITES Secretariat and World Wide Fund for Nature/Trade Records Analysis of Flora and Fauna in Commerce collaborate to oversee international trade records and bring to light illegal trafficking in prohibited species.<sup>142</sup> This collaboration takes the form of statistical correlation of trade reports and field work by the NGO.<sup>143</sup>

These activities show the significant role played by secretariats in implementation. Not all secretariats have been granted the same powers, nor do all of them play equally important roles (for example, the UNFCCC Secretariat has not been mandated to do much, and as a result, does not do much). Nevertheless, they are indispensable as "subjects of coordi-

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130. *Id.*

131. Steffen Bauer, *The Ozone Secretariat: Administering the Vienna Convention and the Montreal Protocol on Substances that Deplete the Ozone Layer* 8 (Global Governance Working Paper No 28, 2007), available at [www.glogov.org](http://www.glogov.org). <http://www.glogov.org/images/doc/WP28.pdf>.

132. *Id.*

133. *Id.*

134. *Id.* at 8-9.

135. Bauer, *supra* note 12, at 18.

136. Bauer, Busch, & Siebenhüner, *supra* note 21, at 24.

137. Sandford, *supra* note 36, at 117.

138. *Id.* at 120.

139. *Id.* at 119.

140. *Id.* at 127.

141. *Id.* at 232.

142. *Id.* at 111.

143. *Id.* at 126.

nation” because they transfer information between different actors of their respective regimes, which finally leads to the fulfilment of the treaty objectives.

## VI. Comparative Assessment of the Actual Functioning of Secretariats

Now that we have seen the important role played by secretariats in an international treaty system, it is worthwhile to shed light on the effects of their functions. What has been the impact of secretarial functions? This is the subject to which the article now turns.

The effects of the functions performed by secretariats can be divided into two categories: cognitive, and normative.<sup>144</sup> Cognitive effects include processing and distributing data to stakeholders.<sup>145</sup> In fact, dissemination of information is a key function of secretariats.<sup>146</sup> This may affect the knowledge or belief systems of the actors because political activity is dependent on the information received by the parties from the secretariat.<sup>147</sup> Normative effects include norm-building processes that can also influence political activity aimed at international cooperation.<sup>148</sup> For example, secretariats play a role at the time of treaty negotiation and its amendment by way of protocols.<sup>149</sup> They frame the agenda and procedures in negotiations, thus exercising a certain amount of influence on norm setting.<sup>150</sup> This influence can be used by the secretariat to further the institutionalisation and implementation of the treaty.<sup>151</sup>

### A. COGNITIVE EFFECTS

Although the UNFCCC Secretariat does not really generate new knowledge, it does process factual and descriptive information used by stakeholders, thus contributing to public discourse.<sup>152</sup> Different stakeholders—such as policy makers, negotiators, civil society, and the media—interpret the information provided by the Secretariat.<sup>153</sup> The documentation provided by the Secretariat is in great demand and a large number of visitors visit its website frequently.<sup>154</sup> Moreover, Parties have also requested information in languages other than English.<sup>155</sup> But the Secretariat’s compiling and disseminating activity is dependent on the data provided by the Parties.<sup>156</sup> Thus, even though the Secretariat coordinates the reporting obligations of the Parties, it cannot critically evaluate the data provided by them because the Parties may perceive it as a political assessment.<sup>157</sup> In fact,

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144. Bauer, Busch, & Siebenhüner, *supra* note 21, at 1.

145. *Id.* at 3.

146. *Id.*

147. *Id.*

148. *Id.*

149. *Id.*

150. *Id.*

151. Busch, *supra* note 9, at 2.

152. Bauer, Busch, & Siebenhüner, *supra* note 21, at 9.

153. *Id.* at 10

154. *Id.*

155. *Id.*

156. *Id.* at 13.

157. *Id.*



the job of the Secretariat is to remove all politically-inclined information from the documents it prepares.<sup>158</sup>

The UNCCD Secretariat has been more visible in its cognitive effects. It has, for example, deliberately maintained the use of the expression "desertification" as opposed to "land degradation," because the former has a political appeal and affects the perception of the problem by non-experts.<sup>159</sup> The Secretariat has also succeeded in making the desertification problem appear global instead of regional.<sup>160</sup> This has had a significant consequence because the UNCCD projects are now eligible for funding from the Global Environment Facility (GEF).<sup>161</sup> The Secretariat has always lobbied for developing countries and kept the issue alive at the GEF Council.<sup>162</sup> The Secretariat staff acknowledges its role in obtaining such funding and states that because the UNCCD does not have its own finances, funding from the GEF is necessary to implement its objectives.<sup>163</sup>

The Secretariat also prepares documents on request by the Parties and makes them available on its website. As provided by its mandate, the UNCCD Secretariat has established good contacts with NGOs to promote regional action plans.<sup>164</sup> This cooperation is a continuation of the negotiation phase of the treaty in which NGOs were very closely involved.<sup>165</sup> The Secretariat has also been accused of controversial financial support to select NGOs that has led to a review of its activities by the Parties.<sup>166</sup>

The CBD Secretariat, which is also the outcome of the Rio Summit like the two previous Secretariats, has been successful in its cognitive effects even though they are not very remarkable.<sup>167</sup> In fact, its mandate does not prescribe scientific research.<sup>168</sup> Despite this, it has been quite active in bringing together and diffusing scientific knowledge.<sup>169</sup> For this purpose, it maintains close contact with the scientific community.<sup>170</sup> The Secretariat mainly collects scientific information on different ecosystems and processes it for the member states.<sup>171</sup> For this, it maintains a scientific and technical division.<sup>172</sup> The Secretariat prepares documents, reports, handbooks, and newsletters in addition to providing information on its website.<sup>173</sup> It also publishes the Global Biodiversity Outlook, a report on the measures to implement the objectives of the Convention.<sup>174</sup> Therefore, the Secretariat has extensive expertise on biodiversity-related matters and functions as an informa-

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158. Busch, *supra* note 9, at 3.

159. BAUER, *supra* note 11, at 78-79.

160. *Id.* at 79.

161. *Id.*

162. *Id.*

163. *Id.*

164. Bauer, *supra* note 12, at 24.

165. *Id.*

166. *Id.* at 25.

167. Bauer, Busch, & Siebenhüner, *supra* note 21, at 18.

168. *Id.*

169. *Id.* at 18-19.

170. *Id.* at 18.

171. *Id.* at 18-19.

172. CBD, The CBD Secretariat, Divisions, <http://www.cbd.int/secretariat/divisions/> (last visited Nov. 16, 2011).

173. Bauer, Busch, & Siebenhüner, *supra* note 21, at 19.

174. *Id.*

tion hub.<sup>175</sup> It is also involved in a review mechanism supported by governments and NGOs.<sup>176</sup> But the information supplied by the Secretariat is primarily used by member states and NGOs and not generally used by the scientific and business communities.<sup>177</sup> The Secretariat has not been able to influence public discourse in its field.<sup>178</sup> Its activities do not garner much attention from the media either.<sup>179</sup> This is despite the fact that the information it provides is viewed as credible by various stakeholders that make use of it.<sup>180</sup> Nevertheless, this credibility coupled with the fact that the Secretariat is viewed as politically neutral leads to a relationship of trust between the Parties and the Secretariat.<sup>181</sup>

One reason for the limited (but successful) cognitive effects of the CBD Secretariat is that biodiversity loss does not generate public interest.<sup>182</sup> For example, the loss of species of insects does not lead to natural disasters and therefore its redressal is not a priority for the public.<sup>183</sup> Hence, the activities of the Secretariat cannot generate enough public opinion to impact the actions of the member states. It has only had a limited influence on public awareness of biodiversity but has still helped in the identification of new environmental issues in national jurisdictions.<sup>184</sup> Consequently, the Secretariat has responded by coming up with a communication strategy to reach a wider public.<sup>185</sup> Its aim is to educate the media, students, governments, etc. of biodiversity conservation.<sup>186</sup> Another reason for the CBD Secretariat's limited cognitive effects is that biodiversity conservation measures involving rights of land owners are politically sensitive and therefore the Secretariat cannot do much.<sup>187</sup> Additionally, the objectives of the Convention are vague and do not include any specific quantifiable targets to be achieved by member states.<sup>188</sup> In such a situation, the effects of the Secretariat may actually be considered remarkable.

The Ozone Secretariat, which, like the other two Secretariats in the sample, serves a Protocol also, has had significant cognitive effects.<sup>189</sup> This is despite the fact that it did not develop from the UNEP Ozone Unit until after the adoption of the Montreal Protocol in 1987.<sup>190</sup> It plays an important role in highlighting unsolved issues in the ozone regime.<sup>191</sup> Because the Montreal Protocol is considered one of the most effective environmental treaties, governments are lackadaisical in their attitude towards it, which leads to the exploitation of unregulated ozone depleting substances by the private sector.<sup>192</sup> It is precisely in this area that the Secretariat has a role to play, because it must inform the

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175. *Id.* at 21.

176. *Id.* at 19.

177. *Id.*

178. *Id.*

179. *Id.*

180. *Id.*

181. *Id.*

182. *Id.* at 20.

183. *Id.* at 20-21.

184. Siebenhüner, *supra* note 125, at 265.

185. *Id.*

186. *Id.*

187. *Id.* at 271.

188. *Id.*

189. Bauer, Busch, & Siebenhüner, *supra* note 21, at 22.

190. *Id.*

191. *Id.*

192. *Id.* at 22-23.

Parties of what is going on.<sup>193</sup> For creating awareness, it uses such means as information kits and slide projections.<sup>194</sup> The Secretariat also processes knowledge and feeds it into the negotiation process.<sup>195</sup> In fact, even the UNEP Ozone Unit was involved in knowledge dissemination to all the stakeholders during the negotiation of the Vienna Convention.<sup>196</sup>

The CITES Secretariat has expertise that it uses on various occasions, such as changes of governments.<sup>197</sup> It holds (re)training programmes for national officers every time a government changes, especially in Africa and Latin America.<sup>198</sup> Because formal communications can be difficult at such a time, the Secretariat uses means such as fax and telephone to keep in touch with the state and non-state actors.<sup>199</sup> Thus, the Secretariat has the infrastructure and knowledge to guide new officials.<sup>200</sup> Furthermore, it has regional centres employing specialists who can disseminate expert knowledge.<sup>201</sup> It has also recommended to governments not to change the head of the CITES Management Authority as s/he has invaluable expertise<sup>202</sup> that could impact the actions of stakeholders. The Secretariat also uses its technical expertise to conduct analyses of national reports to advise and recommend actions to be taken.<sup>203</sup>

The CITES Secretariat must also convince members of the importance of conservation, which is difficult in the case of developing countries.<sup>204</sup> In this case, it uses an anthropocentric approach,<sup>205</sup> helping the countries to develop alternatives to wildlife trading for their locals.<sup>206</sup> The Humane Society, an NGO, termed the CITES Secretariat as very influential because it provides reliable data, detects infractions, and advises Parties.<sup>207</sup> Generally, the recommendations made by the Secretariat are not ignored by the Parties. In fact, the Secretariat enjoys authority due to its professional expertise and experience.

## B. NORMATIVE EFFECTS

The UNFCCC Secretariat has not exercised much visible influence on the political outcome of negotiations or on the adoption of specific measures by Parties.<sup>208</sup> It did not have much influence on the direction and content of the negotiations leading to the adoption of the Kyoto Protocol either. Despite this, one can say that the Secretariat exercised indirect influence because it facilitated the negotiations leading to a successful outcome by

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193. *Id.* at 23.

194. *Id.*

195. *Id.*

196. *Id.*

197. See Sandford, *supra* note 36, at 232-33.

198. *Id.* at 232.

199. *Id.* n. 13.

200. *Id.* at 233.

201. *Id.* at 253.

202. *Id.* at 232.

203. *Id.* at 118.

204. *Id.* at 239.

205. *Id.*

206. *Id.* at 245.

207. *Id.* at 239.

208. Bauer, Busch, & Siebenhüner, *supra* note 21, at 10.

providing strategic advice to the COP President and respective Chairs and officers.<sup>209</sup> This was particularly evident at the resumed COP 6 in Bonn in July 2001, where the Secretariat drafted a text that assisted the Parties in deciding on the technical features of the Kyoto mechanisms and then adopting the Marrakech Accords at COP 7 in Marrakech in November 2001.<sup>210</sup> The Secretariat did not lean one way or the other, politically, in the text but instead it merely removed incoherence in the previous texts and provided technical solutions.<sup>211</sup> The Secretariat can only step in once the Parties are in political agreement and cannot push forward questions on which Parties are in disagreement.<sup>212</sup> This kind of support for negotiations and technical advice is highly appreciated by the Parties.<sup>213</sup>

One of the reasons why secretariats might have a limited influence is because of the high costs of regulation in domestic economies and the high political stakes.<sup>214</sup> In such a case parties monitor the activities of the secretariat to make sure they are not acting against parties' respective interests and are reluctant to give any latitude to the secretariat to act.<sup>215</sup> The Climate Secretariat, for instance, cannot take a stand in the documentation it prepares and must reflect the positions of all Parties.<sup>216</sup> The Secretariat can only make technical propositions and cannot comment on politically sensitive issues.<sup>217</sup> Even though this may be called an exercise in impartiality, taking a stand does not necessarily amount to partiality.

This does not mean that the Secretariat does not exercise any influence, however; as this article has noted, its influence is limited but it does exist.<sup>218</sup> The source of its influence is its political and technical expertise on climate change issues and its ability to provide input in a timely manner. For example, the Secretariat prepares technical papers for subsidiary bodies. Given that it is an authority on the climate regime, it can come up with the requisite analysis of issues critical to the negotiations.<sup>219</sup> Thus the Secretariat possesses expertise unmatched in national jurisdictions and prepares its documents in a politically neutral way so that such documents are acceptable to the Parties when negotiating.<sup>220</sup> It prepares, on request, drafts and proposals for the presiding officers that contain options for agreement amongst Parties, advice on the conduct of negotiations, possible outcomes, negotiating arena, procedural obstacles, and ways to overcome them.<sup>221</sup> In fact, the COP at The Hague failed largely due to lack of secretarial advice.<sup>222</sup> This shows the significance of the Secretariat's advisory function. The Secretariat also

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209. *Id.* at 11.

210. *Id.*

211. *Id.*

212. *Id.* at 11-12.

213. *Id.* at 11.

214. *Id.* at 12.

215. *Id.*

216. *Id.*

217. *Id.* at 12.

218. *Id.* at 14.

219. FARHANA YAMIN & JOANNA DEPLEGE, *THE INTERNATIONAL CLIMATE CHANGE REGIME: A GUIDE TO RULES, INSTITUTIONS AND PROCEDURES* 484-85 (2004).

220. Bauer, Busch, & Siebenhüner, *supra* note 21, at 14.

221. Busch, *supra* note 8, at 5-6.

222. *Id.* at 5.

provides the logistics *in the form of organising* negotiations.<sup>223</sup> This is a very important function because climate change negotiations involve a large number of participants.<sup>224</sup> According to a staff member, “[n]o meeting ever succeeded because the logistics were great. But if the logistics are bad, the negotiations can fail.”<sup>225</sup>

In the case of the UNCCD Secretariat, its staff members were involved in the negotiations of the Convention, especially the former Executive Secretary, Hama Arba Diallo, who led the interim Secretariat.<sup>226</sup> The continuity of their presence contributed to the institutionalisation and implementation of the Convention. Because the Convention itself contains regional annexes, the Secretariat’s efforts, through its Regional Action Facilitators, are oriented towards Africa, Asia, and Latin America, the affected regions.<sup>227</sup> The Secretariat has aimed to improve cooperation between regions through Regional Co-ordination Units (RCUs) to implement regional action plans.<sup>228</sup> The affected countries were receptive to the idea of institutionalisation of the Convention but donor countries were sceptical about it.<sup>229</sup> Another example of institutionalisation of the Convention by the Secretariat is the creation of the Committee for the Review of the Implementation of the Convention (CRIC).<sup>230</sup> This idea originated from within the Secretariat just like the idea to set up RCUs.<sup>231</sup> The creation of the CRIC was not looked upon favourably by the donor countries, similar to the case of the formation of RCUs.<sup>232</sup> Additionally, there were some irregularities regarding the election of CRIC officials, which affected the reputation of the Secretariat.<sup>233</sup> When the CRIC held its meetings, however, this scepticism partially evaporated because it helped to implement the Convention’s objectives.<sup>234</sup>

Not satisfied with its previous efforts towards the institutionalisation of the Convention, the Secretariat continued in the same direction by organising a High Level Segment of Heads of State and Government at the Havana COP to get public attention for the Convention.<sup>235</sup> It invited Heads of State of developing countries such as Fidel Castro, Robert Mugabe, and Hugo Chávez.<sup>236</sup> In contrast, it did not invite any Heads of State from developed countries.<sup>237</sup> This Segment even resulted in a Havana Declaration of Heads of States and Governments.<sup>238</sup> All these activities show the Secretariat’s consistent support for the developing world. The developed countries expressed their displeasure at the activities of the Secretariat.<sup>239</sup> Developing countries, being at the mercy of rich donor countries, also criticised the Secretariat for holding the Segment. This led to the Parties

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223. *Id.* at 6.

224. *Id.* at 6-7.

225. DEPLEDGE, *supra* note 22, at 71.

226. Bauer, *supra* note 12, at 22-23.

227. BAUER, *supra* note 11, at 79-80.

228. *Id.* at 80.

229. *Id.*

230. *Id.*

231. *Id.*

232. *Id.*

233. Bauer, *supra* note 12, at 25.

234. BAUER, *supra* note 11, at 80.

235. Bauer, Busch, & Siebenhüner, *supra* note 21, at 16.

236. *Id.* at 17, n. 42.

237. *Id.*

238. *Id.* at 16.

239. *Id.* at 17.

exercising greater control over the activities and resources of the Secretariat.<sup>240</sup> However, the very fact that the Segment ignited so much controversy shows the important role secretariats are capable of playing in the sphere of intergovernmental diplomacy.

Since the UNCCD negotiations began at the Rio de Janeiro Summit in 1992, the Convention has been framed as a sustainable development convention aimed at alleviating poverty, a point highlighted by the Secretariat and developing members.<sup>241</sup> Given that it is supposed to be a desertification convention, this framing leads to a certain amount of ambiguity in its objectives.<sup>242</sup> This ambiguity gives a lot of liberty to the Secretariat, which prefers a broad interpretation of the Convention.<sup>243</sup> In fact, this ambiguity helped the Secretariat to shape the current Convention process.<sup>244</sup> Given that desertification affects developing countries much more than developed countries, the Convention is not of much interest to the latter. Therefore, the developing countries perceive the Secretariat's support as a positive factor.<sup>245</sup> On the one hand, the Secretariat could be said to be faithful to the objectives of the treaty, but on the other hand, this pro-developing country attitude may put a question mark on the impartial character of the Secretariat. This is a case of the Secretariat deciding which of the two masters it wants to serve—the treaty (since the title of the convention refers to Africa) or the parties or both.

The CBD Secretariat has generated substantial normative effects compared with other secretariats.<sup>246</sup> Its effects result from international cooperation and assistance in negotiations.<sup>247</sup> In fact, because the Secretariat has expert knowledge of the biodiversity regime (as we have seen in addressing its cognitive effects) and is neutral, it is able to generate normative effects beyond its mandate.<sup>248</sup> For example, the Secretariat held dialogues on the issue of biosafety and encouraged Parties to participate in the negotiations<sup>249</sup> despite their conflicting priorities. As a result, a lot of countries participated in the negotiations on the Cartagena Protocol on Biosafety, leading to its successful adoption.<sup>250</sup> Also, the Convention has an inclusive approach towards non-state actors unlike other conventions.<sup>251</sup> This inclusive approach is also the result of the efforts of the Secretariat, which supported the inclusion of indigenous and local communities in the working group on traditional knowledge.<sup>252</sup> The Secretariat's role in encouraging NGO participation in the regime has been highlighted by a majority of stakeholders.<sup>253</sup> Additionally, the Secretariat prepares background documents for the meetings of the COP and other subsidiary bodies and organises the meetings.<sup>254</sup> It also prepares COP decisions, in which passages relating

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240. *Id.*

241. *Id.*

242. *Id.*

243. *Id.*

244. *Id.*

245. *Id.*

246. *Id.* at 18.

247. *Id.* at 19.

248. *Id.* at 21.

249. *Id.* at 19.

250. *Id.*

251. *Id.* at 20.

252. *Id.*

253. Siebenhüner, *supra* note 125, at 266.

254. Bauer, Busch, & Siebenhüner, *supra* note 21, at 20-21.

to technical assessments have been adopted without any changes.<sup>255</sup> Of course, drafts prepared by the Secretariat are frequently amended when the issue in question is politically sensitive.<sup>256</sup> On the whole, it is clear that the Secretariat exercises bureaucratic authority and is able to bring about a change in the activities of the different stakeholders.<sup>257</sup>

The Ozone Secretariat, like the Climate Secretariat, drafts reports and decisions to be adopted by the MOP.<sup>258</sup> Though the Executive Secretary attached little importance to the Secretariat's drafts, the staff admits that its legal and technical expertise helps it to indirectly influence the members' decisions because members view the drafts as reliable.<sup>259</sup> Secretariat staff rephrases potentially controversial parts in drafts to make them acceptable to delegates.<sup>260</sup> This expertise, which results from a highly qualified, sincere, and professional staff, allows the Secretariat to command considerable authority.<sup>261</sup> Apart from the preparation of drafts, the Secretariat has also come up with solutions in case of collapse of negotiations due to politically sensitive issues.<sup>262</sup> The Secretariat also tries to convince Parties to ratify amendments to the Montreal Protocol as the number of members to the Convention, the Protocol, and its amendments are different thus increasing the work of the Secretariat.<sup>263</sup> Its mandate allows it to invite non-members to meetings.<sup>264</sup> It also communicates to the Parties any proposed Protocol to be adopted, at least six months before the COP meeting for its adoption (article 8(2) of the Vienna Convention).<sup>265</sup> It is also required to communicate proposed amendments to the Convention or Protocol to the Parties at least six months before the COP or MOP meeting for its adoption. The Secretariat shall also communicate proposed amendments to the signatories to this Convention for information (article 9(2) of the Vienna Convention).<sup>266</sup> Thus, the Secretariat plays an important role in improvements and advances in the treaty, be it the Vienna Convention or the Montreal Protocol. Moreover, the Secretariat is known to be impartial and transparent and has been able to create good relations with developing and developed members.<sup>267</sup> This certainly helps in furthering the treaty regime.

The CITES Secretariat has had diverse normative effects. It receives proposed amendments to the Appendices from the Parties 150 days before the meeting to discuss them. It is then required to consult the Parties and intergovernmental bodies on the issue and forward the response to the other Parties with its own findings and recommendations (article XV(1)(a) and (2)(b),(c),(e)). This is unlike the Ozone Secretariat that only communicates the proposed amendments to the Convention or Protocol. In case of Parties' replies or objections, the Secretariat shall communicate them to the other Parties (article

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255. *Id.* at 20.

256. *Id.*

257. *Id.* at 19-21.

258. Bauer, *supra* note 131, at 12.

259. Bauer, Busch, & Siebenhüner, *supra* note 21, at 23.

260. Bauer, *supra* note 131, at 12.

261. Bauer, Busch, & Siebenhüner, *supra* note 21, at 25-26.

262. *Id.* at 23.

263. *Id.* at 24.

264. *Id.* at 23-24.

265. Vienna Convention, Mar. 22, 1985, 1513 U.N.T.S. 324, art. 8(2).

266. *Id.* at art. 9(2).

267. Bauer, Busch, & Siebenhüner, *supra* note 21, at 25.

XV(2)(h)). The Secretariat is also required to notify the Parties of the result of the vote on the proposed amendment (article XV(2)(k)). Thus it plays a role in treaty-making.

In case of conflicts among members, the CITES Secretariat being activist sees them as an opportunity to make use of its conflict management skills, thus enhancing its credibility and reputation as an impartial secretariat.<sup>268</sup> Of course the resolution of the conflict must also result in advancing the objectives of the Convention.<sup>269</sup> The Secretariat's expertise in resolving conflicts is well known because it is called upon to resolve conflicts between member states and NGOs, for example, during the negotiation of the Lusaka Agreement which led to a successful outcome.<sup>270</sup> However Parties do not really acknowledge the contribution of the Secretariat in resolving conflicts relating to the implementation of the treaty.<sup>271</sup>

The question of ivory trade has caused much tension between the Parties and the Secretariat because the latter advised the parties to enter a reservation on protection of elephants until they were in a position to be protected.<sup>272</sup> The Secretariat knew this recommendation would be problematic because Parties do not appreciate this recommendation-making power as they feel that the Secretariat has too much liberty to make recommendations.<sup>273</sup> So the unique power to make recommendations does not always work in favour of the Secretariat.<sup>274</sup> However, when the Secretariat recommended to the Standing Committee to take action against Italy for violation of CITES regulations, the members actually imposed trade bans on Italy, making it comply.<sup>275</sup> In case of trade in endangered species in Thailand, the Secretariat recommended more time for implementation. Thailand worked with the Secretariat and thus avoided sanctions.<sup>276</sup> Thus, the CITES Secretariat is not just a servant of the Parties. It also helps in fulfilling the objectives of the Convention. These three examples make it clear the CITES Secretariat is quite activist even though it may not always succeed in its efforts. But this activism is actually the result of a formal mandate to make recommendations. Moreover, the Secretariat prepares projects on Parties' request and makes recommendations to the Standing Committee about which of these should be funded and has also recommended the use of trade bans against defaulting members.<sup>277</sup>

Relations between the Secretariat and NGOs deteriorated in the 1980s when the latter accused the Secretary General of favouring ivory trade.<sup>278</sup> The Secretariat reacted in a very mature way. It did not stop communicating with the NGOs. This has an impact on the achievement of the goals of the treaty. This also explains why the Secretariat is good at handling conflicts that ultimately leads to furthering the Convention. The fact that these efforts of the Secretariat bear fruit is proof of its commitment to the Convention.

268. See Sandford, *supra* note 36, at 165.

269. *Id.*

270. *Id.* at 167, 261.

271. *Id.* at 376.

272. *Id.* at 227.

273. *Id.* at 228.

274. *Id.*

275. *Id.* at 229.

276. Sandford, *supra* note 7, at 16.

277. Sandford, *supra* note 36, at 225, 244.

278. *Id.* at 167.



The number of Parties to the CITES was twenty-one in 1973 and 134 in 1996.<sup>279</sup> This increase was due to the activism of the CITES Secretariat that made efforts to convince developing and developed countries to become members of the treaty.<sup>280</sup> These efforts have continued and the number of Parties currently is 175.<sup>281</sup> Additionally, the Secretariat has made efforts to include plants under regulated species as the Convention is seen as one that is too focussed on animals.<sup>282</sup> This is a very significant contribution to the advancement of the Convention. The Secretariat is also respected by all for being impartial.

There are many factors that affect the performance of secretariats, such as cooperation with other entities, finances, and leadership, to name a few. For example, if the cost of alleviating the problem is very high or the time span between the cause and effect of the problem is too long, governments may try to reduce the role of treaty secretariats.<sup>283</sup> However, the authority exercised by secretariats by virtue of their institutional memory, varied knowledge base, professional diversity, and leadership allows them to play a role in the functioning of the treaty.<sup>284</sup> One of the most important factors affecting the role of secretariats is their leadership.

## VII. Leadership

Leadership is a phenomenon that elicits divergent opinions. On the one hand, scholars like Thomas G. Weiss feel that the role of leadership in international organisations is exaggerated because leaders function within an inherently complex structure and are not always free to make decisions.<sup>285</sup> On the other hand, there are scholars like Oran R. Young who feel that the success or failure of institutional bargaining in international organisations depends on the leadership.<sup>286</sup> He defines leadership as “the actions of individuals who endeavour to solve or circumvent the collective action problems that plague the efforts of parties seeking to reap joint gains in processes of institutional bargaining.”<sup>287</sup> It is thus clear that leaders, in isolation, cannot determine the success of institutional bargaining but good leadership can go a long way in achieving success.<sup>288</sup> This article subscribes to Oran R. Young’s view about the importance of the role of leadership.

The functions and impacts of secretariats are greatly determined by their leaders. The main actors in secretariats are the top executives, especially the head of the organisation who guides the staff. Skilful leadership allows the secretariat to have more impact. The personality and abilities of the head are very important when forging relationships with the parties and other intergovernmental organisations. S/he must maintain informal ties with the relevant persons without sacrificing the impartiality of the secretariat. The point of view of the leader regarding the role of the secretariat in treaty implementation deter-

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279. *Id.* at 224.

280. *Id.*

281. CITES, Member Countries, available at <http://www.cites.org/eng/disc/parties/index.php>.

282. Sandford, *supra* note 36, at 230.

283. Bauer, Busch, & Siebenhüner, *supra* note 21, at 4.

284. *Id.* at 3-7.

285. See Weiss, *supra* note 1, at 299.

286. Oran R. Young, *Political Leadership and Regime Formation: On the Development of Institutions in International Society*, 45 INT’L ORG. 281 (1991).

287. *Id.* at 285.

288. *Id.*

mines the role the secretariat will play in the treaty regime. The leadership determines the performance of the secretariat and how it is perceived by the stakeholders. In fact, the behaviour of the head can have an impact on the behaviour of the stakeholders in the entire regime.

The UNFCCC Secretariat does not project itself as the leader. Even though the Executive Secretary can provide some sort of "inspirational leadership,"<sup>289</sup> the first Executive Secretary of the Climate Change Secretariat, Michael Zammit Cutajar, did not want overt involvement of the Secretariat staff in the climate regime.<sup>290</sup> The staff does not make any effort to influence the political activity and is aware that this would contradict its mandate.<sup>291</sup> Thus, the Secretariat does not exercise proactive leadership. Staff members stay impartial by following the instructions of the Parties and this in turn helps the Secretariat influence the regime.<sup>292</sup> The Secretariat enjoys the trust of the Parties. This is due to Michael Zammit Cutajar, who having worked in the UNCTAD previously<sup>293</sup> had good knowledge of UN procedures and of developing country concerns. He served for over a decade as Executive Secretary,<sup>294</sup> gaining the confidence of Parties through his good relations. He was known to be efficient, objective, intelligent, committed, professional, and affable. The next Executive Secretary, Joke Waller Hunter followed in his footsteps, i.e. she managed to keep the trust of the Parties.

The UNCCD Secretariat's leadership has been instrumental in bringing about institutionalisation and implementation of the Convention. The former Executive Secretary Hama Arba Diallo from Burkina Faso was head of the Secretariat of the Intergovernmental Negotiating Committee on Desertification and of the interim Secretariat. He was popular with developing countries.<sup>295</sup> He played an important role in the negotiation of the Convention and was known to take a stand against developed members.<sup>296</sup> The current Executive Secretary is Luc Gnacadja from Benin.<sup>297</sup> This could be symbolic as desertification mainly affects Africa.<sup>298</sup> This may also show the preference for an Executive Secretary who comes from the affected region and so has a good grasp of the problem.

The effects of the CBD Secretariat can be explained by the functioning of its leadership. For example, the Executive Secretary proposed a Staff Development Policy adopted by the COP in 2002 which encourages staff to improve and evaluate its competencies.<sup>299</sup> This obviously helps in better functioning of the Secretariat and thus of the treaty regime. The first Executive Secretary of the CBD Secretariat, Calestous Juma, had frequent conflicts with the UNEP because he wanted more autonomy for the Secretariat.<sup>300</sup> Since the

289. Depledge, *supra* note 23, at 54.

290. *Id.* at 63.

291. Busch, *supra* note 9, at 12.

292. *Id.* at 12-13.

293. Depledge, *supra* note 23, at 63.

294. *Id.*

295. Bauer, Busch, & Siebenhüner, *supra* note 21, at 18.

296. *Id.*

297. UNCCD, Secretariat, <http://www.unccd.int/secretariat/menu.php?newch=l2> (last visited Jan. 20, 2012).

298. UNCCD, Fact Sheet 11, Combating Desertification in Africa, [http://www.unccd.int/publicinfo/fact\\_sheets/showFS.php?number=11](http://www.unccd.int/publicinfo/fact_sheets/showFS.php?number=11) (last visited Dec. 12, 2011).

299. Siebenhüner, *supra* note 125, at 270.

300. *Id.*

CBD Secretariat is hosted by the UNEP, any attempt to break away does not make sense. As long as the Secretariat can fulfil its mandate, whether or not it is autonomous is not really the question. But these efforts at autonomy did bear fruit because the next Executive Secretary, Hamdallah Zedan, who was from the UNEP itself, took the reins of a rather independent Secretariat.<sup>301</sup> Moreover, he did not let UNEP exercise any further control on the Secretariat and instead favoured more autonomy.<sup>302</sup> He also favoured consulting his staff when taking decisions, thus bringing about a change in the centralised decision-making procedure that existed earlier.<sup>303</sup> The current Executive Secretary Ahmed Djoghlaif has emphasised capacity building and implementation as areas requiring further action.<sup>304</sup> Thus, it is clear that the leadership has contributed to the useful effects of the Secretariat.

Despite the fact that all the Executive Secretaries of the UNCCD and CBD Secretariats have been from developing countries, the difference in the stand of the two Secretariats is obvious. The UNCCD Secretariat is manifestly pro-developing countries whereas the CBD Secretariat is impartial.

The role played by the Ozone Secretariat is reinforced by its leadership. Mustafa Tolba, Executive Director of UNEP, was very overtly involved in the ozone negotiations and is respected for having furthered the formation of the ozone regime.<sup>305</sup> All the stakeholders, including staff and delegates, are unanimously appreciative of his leadership capabilities. His successor, Madhava Sarma, the first Executive Secretary of the Ozone Secretariat, was also respected by all the parties.<sup>306</sup> Like Mustafa Tolba, who played an important role in the Vienna Convention and Montreal Protocol negotiations, Sarma also played a significant role in resolving impasses at the sessions of the MOP to amend the Montreal Protocol.<sup>307</sup> Both would consult informally with Parties before the beginning of formal negotiations to achieve consensus.<sup>308</sup> Marco Gonzalez, the current Executive Secretary, is more prudent in his approach to the Parties<sup>309</sup> but understands fully well the consequences of Parties not willing to commit in negotiations. According to him, even though the Secretariat is meant to serve the Parties, it also reminds them of their responsibilities.<sup>310</sup> Also, the fact that the Ozone Secretariat processes knowledge that is used in informal meetings of the Parties shows not only its expertise but also the dynamism of its leadership. The role of the personnel and the leadership is commendable given the limited autonomy of the Secretariat being part of the UNEP. Additionally, the Executive Secretary has to make do with a very small staff.<sup>311</sup>

The leadership of the CITES Secretariat has had a turbulent history. The achievements of the Secretariat, however, are a testimony of its commitment to the Convention. In 1989, American NGOs accused the Secretariat of supporting ivory trade and its Secre-

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301. *Id.*

302. *Id.*

303. *Id.*

304. *Id.*

305. Depledge, *supra* note 23, at 63.

306. Bauer, *supra* note 131, at 14.

307. *Id.*

308. *Id.* at 13.

309. *Id.* at 14.

310. *Id.* at 13.

311. *Id.* at 10.

tary General, Eugène Lapointe, of receiving payments from ivory traders, because of which he was dismissed by Mustafa Tolba, the then Executive Director of UNEP.<sup>312</sup> The Secretariat staff is sympathetic to Lapointe and are now cautious in their relations with NGOs. In 1998, Izgrev Topkov, the then Secretary General, was also removed from his post, along with two other officers, for awarding permits to organisations that wanted to trade in banned plants and animals. This was the result of an inquiry by Klaus Tpfers, Executive Director of UNEP.

The Secretariat has also had many problems with the UNEP over common services and costs of being located in Geneva.<sup>313</sup> In 1995, the Secretary-General Izgrev Topkov suggested that the International Union for Conservation of Nature (IUCN) that was acting as the CITES Secretariat had not put in enough effort to make their alliance work, because of which the parties decided to move it to the UNEP.<sup>314</sup> But there were problems with the UNEP too and according to Topkov, since the Secretariat had been through this with IUCN, it knew that bowing to UNEP would spell the end of its autonomy.<sup>315</sup> Thus, he could be said to be like Calestous Juma, the first Executive Secretary of the CBD Secretariat, who was very concerned about the independence of his Secretariat. Given the strong personality of its head, it is not surprising that the CITES Secretariat is quite active. Furthermore, Topkov realised that employees were underpaid and on short-term contracts.<sup>316</sup> He therefore secured them longer contracts.<sup>317</sup> He believed that he could not win the loyalty of the staff if he did not take care of it. It is curious that the CITES Secretariat has such a bad relationship with UNEP, unlike the Ozone Secretariat. And Mustafa Tolba buckled under U.S. pressure to dismiss Lapointe. Perhaps, this is just one reason explaining the bad relationship between the UNEP and the CITES Secretariat. What is really surprising is that the Secretariat is so active despite its controversial leadership.

Lapointe's generation was dedicated to the protection of the environment. The new generation of leaders is more concerned about the efficiency of the Secretariat,<sup>318</sup> as is clear by Topkov's attitude. But this attitude cannot be criticised *per se* because it must be judged by what it achieves in terms of the Convention's objectives. The Secretariat has played a role in resolving conflicts amongst members, as mentioned earlier. Its senior officers, such as the Secretary General, Deputy Secretary-General, and the Scientific Officer have facilitated negotiations among members.<sup>319</sup> Therefore, they are highly regarded by all the stakeholders.<sup>320</sup> Additionally, the Secretary General is also responsible for the budget of the Secretariat.<sup>321</sup>

This overview proves that leaders of environmental secretariats have made a significant contribution to the functioning of secretariats and, as a result, on the impact of secretariats on the treaty regime.

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312. Sandford, *supra* note 36, at 213, 228, 254.

313. *Id.* at 235.

314. *Id.*

315. *Id.* at 235-36.

316. *Id.* at 248.

317. *Id.* at 248, n. 19.

318. *Id.* at 255.

319. *Id.* at 257.

320. *Id.* at 391.

321. *Id.* at 242.

### VIII. Problems Faced by Environmental Secretariats

One problem faced by secretariats is the issue of sovereignty, i.e. the parties and not the secretariats are the decision-makers.<sup>322</sup> Parties can do anything in the name of sovereignty. Also, different departments or ministries of the government have different priorities so secretariats get different signals from the same government.<sup>323</sup> For example, the Ministry of Trade will promote trade, whereas the Ministry of Forests will promote conservation.<sup>324</sup> Moreover, changes in national governments mean changes in national priorities and new government officials must be briefed every time.<sup>325</sup> If a new government changes its priority from environment to education, the secretariat can only advance the goal of the treaty within this change in priority. Within this constraint, the secretariat has to try to achieve the treaty objectives so it constantly communicates with parties' governments, providing relevant information, etc. The secretariat may also cooperate with NGOs as they can mobilise opinion that may influence the implementation of the convention by a party. This is certainly useful if the convention is not a priority for the new government. Secretariats may also build contacts with the media for this purpose.

Another problem is finances. With the passage of time, the number of parties to treaties has gone up, thus increasing the workload and financial needs of secretariats. When parties want to restrain the expansion of secretariats, they may use budget constraints.<sup>326</sup> This may be the case if parties do not want the secretariat to play a role in compliance monitoring, for example, by travelling and verifying implementation by parties. Moreover, parties are reluctant to provide funds for implementation problems as that would amount to admitting their existence.<sup>327</sup> Therefore, secretariats are hesitant to ask for funds. The CITES Secretariat faced this problem and had to ask for funds stating that they were for the performance of substantive tasks.<sup>328</sup> Also, parties may not pay their contributions in a timely manner, forcing the secretariat to do fund-raising from their parent organisation or external sources such as NGOs, which is time consuming and may put its neutrality at risk. But this is not a substitute for parties' contributions. Additionally, lack of funds may not let the secretariat employ quality staff.<sup>329</sup> In this case the work is outsourced to consultants or even NGOs. But in the face of changing governments, continuity is required in the secretariat staff. Therefore, secretariats try to obtain contributions from important members first and then persuade other members to pay.

Some parties may feel the secretariat is too active and may try to restrain its activities. But in fact, the secretariats do not overstep their limits as they have their survival in mind. Anyway, staff cannot be hired without COP approval. Also, the parties are sometimes suspicious of the activities of the secretariat. For example, the parties to the UNFCCC never analysed the financial activities of the Secretariat, but have started doing so now.<sup>330</sup> Additionally, the programme budget decision for 2004-2005 requested the Executive Sec-

322. Bauer, Busch, & Siebenhüner, *supra* note 21, at 5.

323. Sandford, *supra* note 36, at 135.

324. *Id.* at 241.

325. *Id.* at 135-36.

326. *Id.* at 142-143.

327. *Id.* at 376.

328. *Id.*

329. *Id.* at 140-42.

330. YAMIN & DEPLEDGE, *supra* note 219, at 502-03.

retary to specify how COP decisions on article 4(8) of the UNFCCC<sup>331</sup> are reflected in the work programme and to conduct an evaluation of the Secretariat's activities and report to the COP 11. Moreover, Saudi Arabia, speaking for G77 and China, asked for a continuing review of the functions and operations of the Secretariat. This close supervision of the Secretariat may be useful if it is not done for political purposes.<sup>332</sup>

Parties do not appreciate the presence of NGOs in their jurisdictions.<sup>333</sup> For example, there are northern NGOs which monitor trade in Asia and Africa and report to the CITES Secretariat to identify infractions.<sup>334</sup> Frequently, the NGOs are more interested in making money and have little understanding of the problem or culture of the issue in question.<sup>335</sup> Moreover, developing countries do not always have the resources to put into practice all the rules of the Conventions, and NGOs do not understand this.<sup>336</sup> Therefore, secretariats play a role in improving relations between the stakeholders. But, because secretariats are dependent on NGOs for fieldwork, their dislike by the parties may not allow the secretariat to fulfil its monitoring obligation.

National governments try to exert pressure on their nationals to influence the course of action in the secretariats.<sup>337</sup> This means that geographical quotas may lead to international civil servants promoting national interests within the international secretariat.<sup>338</sup> In fact, the very concept of geographical quotas supports the idea of national loyalties and may lead to the non-fulfilment of the international objectives of the MEA.<sup>339</sup> Thus, these quotas should be eliminated. Instead, they could be based on gender, age, length of service, etc., or a mix of these criteria.<sup>340</sup> Or recruitment could be done in such a way that it is representative of all stakeholders, for example indigenous peoples, involved in the management of the resource to be protected.<sup>341</sup> An example of geographical quotas not serving their purpose is provided by the UNFCCC Secretariat, where developing country nationals are under-represented in the top management.<sup>342</sup> As a result, China and G77 have questioned this and asked for equity in allocation of resources between developed and developing members.<sup>343</sup> If the principle of geographical quotas were not followed, this question would not have arisen.

Secretariats may also face problems with respect to their parent organisation, like the CITES Secretariat has had problems with UNEP. But this conflict related to the field of activity of the Secretariat under the purview the UNEP, i.e. administrative matters, and

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331. Article 4(8) reads as follows, "In the implementation of the commitments in this Article, the Parties shall give full consideration to what actions are necessary under the Convention, including actions related to funding, insurance and the transfer of technology, to meet the specific needs and concerns of developing country Parties arising from the adverse effects of climate change and/or the impact of the implementation of response measures . . . ." UNFCCC, May 9, 1992, 1771 U.N.T.S. 165, art. 4(8).

332. YAMIN & DEPLEDGE, *supra* note 219, at 502-03.

333. Sandford, *supra* note 36, at 237-38.

334. *Id.* at 238.

335. *Id.*

336. *Id.*

337. *Id.* at 160.

338. Weiss, *supra* note 1, at 293.

339. *See id.* at 302-03.

340. *Id.* at 304.

341. SANDFORD, *supra* note 27, at 36-37.

342. *See* DEPLEDGE, *supra* note 22, at 70.

343. *Id.*

not to the field of substantive operations of the Secretariat that are the domain of the COP. Despite this, the secretariat has to spend time dealing with it.

The location of the secretariat can also create problems. For example, the CITES Secretariat may conduct activities such as training programmes in developing countries.<sup>344</sup> But it is located in Geneva and it may be difficult to coordinate from there. It has regional centres<sup>345</sup> but this is not the case with all secretariats. The Ozone Secretariat is located in a developing country but then far away from the UN in Geneva or New York, so coordination is again a problem.<sup>346</sup> Also, developing countries do not always have missions in another developing country so they cannot send delegates, especially on short notice. On the other hand, they have missions in UN centres so they can attend meetings easily. Given that most secretariats are in the North, it may be a good idea to decentralise activities by having regional centres where representatives of various secretariats may participate. Because environmental problems are linked, a forum is needed where all the environmental secretariats can interact, which would be beneficial to the attainment of the goals of the various treaties involved. Regional centres make the secretariat more accessible to stakeholders and help the secretariat to monitor compliance. Furthermore, decentralisation would make their operations more flexible and decisions could be taken faster without the need for consulting the entire management. In addition, decentralised offices, being in the field, understand the problem better and can initiate useful projects that would fulfill the aims of the MEA. Of course, decentralisation leads to higher costs but has many advantages too.<sup>347</sup> The decentralised units can continue to be financed by the main office or may generate their own finances also. Another possibility may be to locate secretariats, whether or not by rotation, in places where the problem to be addressed is most acute because people there have greater understanding of the issue and need more help.<sup>348</sup>

## IX. Conclusion

This analysis of secretariats shows that they do play an important role in the treaty regime. Despite the fact that they lack formal power, they help in ensuring the success of the treaty and can have a significant impact on the international environmental policy outcomes. They do so by impacting the behaviour of states and non-state actors. For example, despite criticism and accusations of lack of transparency, the UNCCD Secretariat has emerged as an active player in the regime. Of course, secretariats cannot be held responsible for the failure or success of the regimes as they are but secretariats. They are not the decision-makers. But they can lead to unpredictable results that impact the implementation of the MEA. The principal role is played by the nation states, but secretariats are fast becoming quite influential even if such influence is not laid down in their mandate. States frequently react to secretariats' actions, as in the case of the UNCCD Secretariat. As a result, it is clear that secretariats exercise bureaucratic authority. But, this authority should be exercised judiciously. For example, the blatant support of developing

344. Sandford, *supra* note 36, at 22.

345. *Id.* at 252.

346. SANDFORD, *supra* note 8, at 22-27.

347. Weiss, *supra* note 1, at 302, n. 36.

348. SANDFORD, *supra* note 27, at 41, 45.

members by the UNCCD Secretariat has proved counterproductive by offending powerful donor countries.

Secretariats offset their little formal power by acting as the information hub and providing the link between states and non-state actors. Moreover, the influence of secretariats is also dependent on their leadership. Being the institutional memory of the regime and the main expert on technical, scientific, legal, and political matters, secretariats are actually indispensable. Parties' appreciation of their work is proof of this fact.

The most important function of secretariats is actually acting as the facilitator and mediator, especially the latter. This means that the most important function is the one that is not really defined in its mandate. This once again proves their importance. Of course, the other functions are equally indispensable, but the effects of acting as a mediator can be quite spectacular; for example, the adoption of the Convention or Protocol.

If secretariats are to continue their important work, their problems need to be solved. They need to be provided with funds and basic autonomy so that they do not spend their time searching for either or both.